Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1999

WILMA L. MARLATT,
WESLEY V. MARLATT,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Wilma L. Marlatt
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2 ?8P

QUESTIONS PRESENTED

On September 17, 1997, Wilma and Wesley Marlatt were erroneously convicted for income tax evasion as a direct result of IRS Constitutional abuses and abuses of IRS official duties towards taxpayers. Without a 5th Amendment warning, the IRS seized the Marlatts' business records for the years 1986, 1987, 1988 and 1989 - almost ten years after the statute of limitations had lapsed. The IRS violated their own laws such as: 18 USC §3282 and IRC § 6531-Three Year Statute of Limitations; IRC § 323.4(c)-Judicial Notice; IRC § 339.2-IRS Violation of Federal Laws; IRC § 341.2-IRS Violation of Constitutional Rights; IRC §341.31-Admissibility of Evidence; IRC § 342.12(1)(2)(9)-Book and Records of an Individual; and IRC § 342.132(7)(9)-Non-custodial Interviews of the Internal Revenue Codes.

The questions presented are:

Why did the Federal Court conceal from the jury in the Court's jury instructions the above-listed IRS violations which would have found the Marlatts not guilty?

The Ninth Circuit neglected to review the above-listed IRS violations against the Marlatts, so did the Ninth Circuit erroneously affirm the Marlatts' conviction?

Should not the Marlatts be acquitted?

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PETITION FOR A WRIT OF CERTIORARI

Wilma Marlatt and Wesley Marlatt respectfully pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered February 12, 1999 without any oral argument in order to resolve issues of facts, laws and gross miscarriage of justice.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit was not published but is contained herein. The Decision of the District Court for Oregon is not reported but is contained herein.

JURISDICTION

The United States Circuit Court of Appeals for the Ninth Circuit entered a judgment on February 12, 1999 without any oral argument, then entered another judgment on March 1, 1999 denying the acquittal and Motion for New Trial without any oral argument also. The jurisdiction of this Court is invoked under 28 U.S.C. §2101(e).

STATUTES INVOLVED IN THIS CASE

18 U.S.C. §3282 and IRC §6531 provide that:

"No person shall be prosecuted, tried, or punished for any of the various offenses arising under the Internal Revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense."

IRC §339.2-Federal violations; IRC §341.2-Constitutional law; and IRC §341.31-Admissibility of evidence, provide: "Failure to give taxpayers the Constitutional warnings prescribed by the Internal Revenue procedures has resulted in the exclusion of evidence obtained from taxpayers."--*U.S. v Leahey; U.S. v Heffner*.

STATEMENT OF THE CASE

This case involves an IRS agent who seized Defendants' business and personal records for the years 1986, 1987, 1988 and 1989 — nearly 10 years after the statute of limitations had ran out in violation of 18 USC §3282 and §6531 of the Internal Revenue Code and without a Fifth Amendment warning.

This case also involves the Court appointed attorneys' lack of skill when all neglected to research the numerous IRS federal violations perpetrated against the Marlatts.

The Court also abused its discretion when it failed to take judicial notice that the IRS violated its own laws to obtain a conviction against the Marlatts and, in the process, intentionally violated the Marlatts' 4th, 5th and 14th Amendment rights to the United States Constitution.

REASONS FOR GRANTING THE PETITION

On April 2, 1990 the IRS summoned the Marlatts' business and personal records for the years 1986, 1987, 1988 and 1989 without a Fifth Amendment warning and 5 years after the 3-year statute of limitations had run out.

On August 8, 1995, the Marlatts were indicted 5 years after the 3-year IRS statute of limitations had lapsed.

On August 9, 1995 the government issued a press release that gave the appearance that the Marlatts were guilty of the charges brought against them, which prejudiced the Marlatts' right to have a fair trial. Further, the Court allowed one of the jurors to have their wife in attendance at the Marlatts' entire trial and subject juror most likely discussed the Marlatts' case with his wife.

On August 9, 1997, the government stated that the Marlatts had incriminated themselves when the Marlatts signed their names to their income tax forms. The Court erred when it failed to protect the Marlatts' 4th, 5th, and 14th Amendment rights to the United States Constitution which the Court was bound by as a matter of law.

The Court also abused its discretion when the Court refused to suppress all evidence against the Marlatts, then later showed it was biased when the Court refused to acquit the Marlatts.

On September 17, 1997 the jury erroneously found the

Marlatts guilty based upon illegally obtained evidence almost 10 years after the state of limitations expired, a biased Court who concealed IRS codes from the jury instructions that would have acquitted the Marlatts, a vindictive prosecutor who called the Marlatts "domestic terrorists," Court appointed attorneys lacking in skill to try an IRS case, IRS misconduct through its pattern of constitutional abuses against the Marlatts and prejudicial publicity in a community of almost 1,500 people where the Marlatts lived.

When the Marlatts appealed their conviction, the Ninth Circuit neglected to review the fact that the prosecutor was barred from prosecuting the Marlatts, and that the Federal Court unduly influenced the jury to find the Marlatts guilty when the Court concealed from the jury, in its jury instructions, in the numerous IRS abuses perpetrated against the Marlatts which would have brought a not guilty verdict.

The ends of justice now requires that the Marlatts' petition for a Writ of Certiorari be granted as the Marlatts contend that they are innocent and do not have any criminal history.

INTERNAL REVENUE CODES

§342.132(9) of the Internal Revenue Code provides that failure to give taxpayers the constitutional warnings prescribed by Internal Revenue procedures has resulted in the exclusion of evidence obtained from the taxpayers — something the IRS neglected to do. - *U.S. v Leahey*; and *U.S. v Heffner*.

IRS Code §341.31 further states that evidence obtained

by Federal officers in violation of a constitutional provision at any stage of an investigation or proceeding will be excluded at the instance of the Defendants' trial in a criminal case. - *Boyd v U.S.*; *Weeks v U.S.*; *Gouled v U.S.*; and *U.S. v Guerrina*. Federal Courts have also excluded such evidence in civil cases.

CONCLUSION

For all of the above issues of facts and issues of law and in the interest of justice, The Petition for Writ of Certiorari should be granted and the Marlatts should be acquitted.

Respectfully submitted,

Wilma L. Marlatt,
Wesley V. Marlatt,
Petitioners
92 Fulton Street, 5th Floor
New York, NY 10038-2809

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	No. 97-30378
Appellee,	DC# CR-95-00324-1-MFM District of Oregon
v.	
WESLEY V. MARLATT,	ORDER
Appellant,	

This case shall be submitted on the briefs and record without oral argument, on January 13, 1999, in Portland, Oregon, pursuant to Fed.R.App.P. 34(a) and Ninth Cir.R. 34-4.

FOR THE COURT
CATHY A. CATTERSON
CLERK OF COURT

By: Gwen Baptiste
Clerk of Court

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Appellee, *v.* WILMA LEE MARLATT, Appellant.	No. 97-30379 D.C. No. CR-95-00324-2-MFM MEMORANDUM[1]

Appeal from the United States District Court
for the District of Oregon
Malcolm F. Marsh, District Judge, Presiding

Submitted January 13, 1999[2]
Portland, Oregon
Before: LEAVY, McKEOWN, WARDLAW, Circuit Judges,

Wilma Lee Marlatt appeals from the judgment of conviction under 26 U.S.C. §§ 7201 (tax evasion) and 7206(1)

1 This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R.36-3.

2 The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a)(2)

(filing false tax returns). She contends that the evidence was insufficient to establish the requisite "willfulness." See United States v. Powell, 955 F.2d 1206, 1211-12 (9th Cir. 1992). Viewing the evidence as a whole, we are persuaded that a rational trier of fact could have found beyond a reasonable doubt that the defendant acted willfully. United States v. Marabelles, 724 F.2d 1374, 1379-80 (9th Cir. 1984).

AFFIRMED.

A TRUE COPY ATTEST
FEB 12, 1999

CATHY CATTERSON
Clerk of Court

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	No. 97-30378
Plaintiff-Appellee,	D.C. No. CR-95-00324-1-MFM
v.	MEMORANDUM[1]
WESLEY MARLATT,	
Defendant-Appellant.	

Appeal from the United States District Court
for the District of Oregon
Malcolm F. Marsh, District Judge, Presiding

Submitted January 13, 1999[2]
Portland, Oregon
Before: LEAVY, McKEOWN, WARDLAW, Circuit Judges.

Wesley Marlatt appeals from the judgment of conviction under 26 U.S.C. §§ 7201 (tax evasion) and 7206(1)

1 This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir.R. 36-3.

2 The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a)(2).

(filing false tax returns), 42 U.S.C. § 408(a)(4) (social security fraud), and 18 U.S.C. §1001 (making false statements). He first contends that the evidence was insufficient to establish the requisite "willfulness." See United States v. Powell, 955 F.2d 1206, 1211-12 (9th Cir. 1992). Viewing the evidence as a whole, we are persuaded that a rational trier of fact could have found beyond a reasonable doubt that the defendant acted willfully. United States v. Marabelles, 724 F.2d 1374, 1379-80 (9th Cir. 1984).

Defendant also contends that the district court improperly limited the testimony of his expert witness. We are satisfied that the district court drew a proper distinction between a permitted predicate opinion and a prohibited opinion or inference as to the ultimate issue of defendant's mental state. See United States v. Morales, 108 F.3d 1031, 1036-38 (9th Cir. 1997). The district court did not abuse its discretion in limiting the testimony. Id. At 1034.

AFFIRMED.

3c

A TRUE COPY ATTEST
FEB 12, 1999

CATHY CATTERSON
Clerk of Court

by: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

v. **CR. No. 95-324-02-MA**

WILMA MARLATT,

DEFENDANT.

FINDINGS OF FACT ORDER
(STATEMENT OF REASONS)

(1) **Adjudication:** The defendant has been adjudged guilty of filing false tax returns in violation of 26 U.S.C. § 7206(1) and tax evasion in violation of 26 U.S.C. § 7201 as charged in counts 1-3 of a five-count indictment.

(2)**Presentence Report:** A Presentence Investigation Report (PSR) has been prepared and presented for review and comment pursuant to Fed. R. Crim. P. 32 without any information being withheld. The PSR has tentatively identified

the following:

- **Sentencing guideline range of 12-18 months;**
- **Offense Level Total of 13; and**
- **Criminal History Category of 1.**

(3) **Resolution of Objections and Disputes to the PSR:** Specific objections and legal disputes made concerning statements and conclusions contained in the PSR were resolved during a court hearing on December, 1997 as follows:

(A) Defendant raised several objections to the background description of the offense. The court found that none of the objections related to matters which would affect the guideline calculations or sentence and thus, no factual findings were necessary.

(B) Defendant objected to the SR's failure to afford her a 2-level reduction for acceptance of responsibility. She claims that she simply relied upon the advice of others and admitted the elements of the offense but simply felt that her

actions were not illegal.

Counts 1-3 require that the defendant admit that she willfully attempted to evade the payment of taxes. Defendant has never admitted that she had such an intent. Further, defendant's post-trial correspondence reveals that she continues to believe that she has been wrongfully convicted and shows no remorse for her crimes. Accordingly, defendant has failed to demonstrate acceptance of responsibility and her objection is denied.

(4) Credit for Acceptance of Responsibility: The court finds the defendant properly denied a 2-level reduction for acceptance of responsibility. This leads to a **Total Offense Level of 13;** with a **Criminal History Category of 1;** for an appropriate **sentencing guideline range of 12-18 months.**

(5) Adoption of the PSR: Other than those paragraphs amended or clarified, the court adopts the PSR referenced in paragraph (2) above, as its own findings and conclusions.

(6) **Departure from the Guidelines:** Defendant seeks a downward departure under 5K2.0 and 5H1.4 based upon physical infirmity. Section 5H1.4 provides that physical condition is "not ordinarily relevant." However, the Guidelines note that 5H factors may justify a downward departure if "extraordinary." Section 5H1.4 provides that "an extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range; e.g. in the case of a seriously inform defendant home detention may be as efficient as, and loss costly, than, imprisonment."

Defendant has suffered from a stroke, is diabetic and suffers high blood pressure and ulcers that require that she take a number of medications. Thus, I have a factual basis for consideration of a departure. I find that this is a unique case and that a 2-level downward adjustment is appropriate considering the factors set forth at 18 U.S.C. § 3553(a), most particularly the need for deterrence of this defendant and his background,

family ties and responsibilities and character.

This leads to a Total Offense Level of 11; with a Criminal History Category of 1; for an adjusted sentencing guideline range of 8-14 months.

(7) **Sentence:**

(a) **Imprisonment:** As to Count 1, defendant is sentenced to incarceration for 4 months, followed by a 3 year period of supervised release, subject to conditions which include a 4-month period of home detention; as to counts 2-3 defendant is sentenced to 4 months concurrent with the sentence imposed on count 1 and concurrent with each other.

(b) **Application of the Guidelines:** The sentence is within the guideline range and that range does not exceed 24 months.

(c) **Fee Assessment:** Pursuant to 18 U.S.C. § 3013, defendant shall pay a $50 fee assessment on each count for a total of $150.

(d) **Fine Assessment:** No fine is required as the defendant has no financial resources of earning capacity above his own needs.

(8) **Purpose of Sentence:** The sentence in this case

is the most appropriate means to address the circumstances in this case and is necessary for the purpose of just punishment, appreciation of the seriousness of the crime, public protection, and deterrence of the defendant and others from similar activity.

DATED this 3rd day of December, 1997.

Malcolm F. Marsh
United States District Judge

cc: Counsel of Record
Probation Office

4 - FINDINGS OF FACT ORDER

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

CR. No. 95-324-01MA

v.

WESLEY MARLATT,

DEFENDANT.

FINDINGS OF FACT ORDER
(STATEMENT OF REASONS)

(1) **Adjudication:** The defendant has been adjudged guilty of filing false tax returns in violation of 26 U.S.C. § 7206(1), tax evasion in violation of 26 U.S.C. § 7201, social security fraud in violation of 42 U.S.C. § 408(a)(4) and willfully making a false statement to the social security administration in violation of 18 U.S.C. § 1001 as charged in a five-count indictment.

(2) **Presentence Report:** A Presentence Investigation Report (PSR) has been prepared and presented

for review and comment pursuant to Fed. R. Crim. P. 32 without any information being withheld. The PSR has tentatively identified the following:

- **Sentencing guideline range of 24-30 months;**
- **Offense Level Total of 17; and**
- **Criminal History Category of 1.**

(3)Resolution of Objections and Disputes to the PSR:

Specific objections and legal disputes made concerning statements and conclusions contained in the PSR were resolved during a court hearing on December, 1997 as follows:

(A) Defendant objected to the use of the 1995 guidelines manual. The court noted that the 1997 manual should be used since it is the manual in effect on the date of sentencing. The court further noted that the use of the 1990 Guidelines manual was not in the defendant's best interest for the reasons set forth in the government's letter of November 12, 1997 (appended to co-defendant Wilma Marlatt's PSR). Accordingly, defendant's objection was denied.

Guideline 1B1.1(f) provides that a "more than minimal planning" adjustment is appropriate "in any case involving repeated acts over a period of time, unless it is clear that each instance was purely opportune." First, defendant met with social security agents and made false statements on at least three occasions. Second, defendant's offense spanned some 18 years. Each time he accepted and cashed a check, he violated a signed promise that he would report any change in his condition relative to his ability to work. He also engaged in a scheme to hide his earnings which (at least) affected the amount of benefits to which he may have been entitled. Accordingly, defendant's objections are denied.

(C) Defendant objects to the PSR's failure to afford him a 2-level reduction for acceptance of responsibility. He claims that he has always truthfully admitted the elements of the offense but simply felt that his actions were not illegal.

Counts 1-3 require that the defendant admit that he willfully attempted to evade the payment of taxes. Defendant has never admitted that he had such an intent. Further,

defendant's pre-trial correspondence reveals that he continues to believe that he has been wrongfully convicted and shows no remorse for his crimes. Accordingly, defendant has failed to demonstrate acceptance of responsibility and his objection is denied.

(4) **Credit for Acceptance of Responsibility:** The court finds the defendant properly denied a 2-level reduction for acceptance of responsibility. This leads to a **Total Offense Level of 17;** with a **Criminal History Category of 1;** for an appropriate **sentencing guideline range of 24-30 months.**

(5) **Adoption of the PSR:** Other than those paragraphs amended or clarified, the court adopts the PSR referenced in paragraph (2) above, as its own findings and conclusions.

(6) **Departure from the Guidelines:** Defendant seeks a downward departure under 5K2.0 and 5H1.4 based upon physical infirmity. Section 5H1.4 provides that physical condition is "not ordinarily relevant." However, the Guidelines note that 5H factors may justify a downward departure if

"extraordinary." Section 5H1.4 provides that "an extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range, e.g. in the case of a seriously inform defendant home detention may be as efficient as, and less costly than, imprisonment."

Defendant has a back injury, has limited use of his right arm and suffers from high blood pressure and diabetes. Thus, I have a factual basis for consideration of a departure. I find that this unique case and that a 2-level downward adjustment is appropriate considering the factors set forth at 18 U.S.C. § 3553(a), most particularly the need for deterrence of this defendant and his background, family ties and responsibilities and character.

This leads to a **Total Offense Level of 15; with a Criminal History Category of 1; for an adjusted sentencing guideline range of 18-24 months.**

(7) Sentence:

(a) **Imprisonment:** As to Count 1, defendant is sentenced to incarceration for 18 months, followed by a 3 year period of supervised release, subject to conditions; as to counts 2-5 defendant is sentenced to 18 months concurrent with the sentence imposed on count 1 and concurrent with each other.

(b) **Application of the Guidelines:** The sentence is within the guideline range and that range does not exceed 24 months.

(c) **Fee Assessment:** Pursuant to 18 U.S.C. § 3013, defendant shall pay a $50 fee assessment on each count for a total of $250.

(d) **Fine Assessment:** No fine is required as the defendant has no financial resources or earning capacity above his own needs.

(e) **Restitution:** The court declines to order restitution as the defendant does not appear to have the ability to pay.

(8) **Purpose of Sentence:** The sentence in this case is the most appropriate means to address the circumstances in this case and is necessary for the purpose of just punishment, appreciation of the seriousness of the crime, public protection,

and deterrence of the defendant and others from similar activity.

DATED this 2nd day of December, 1997.

Malcolm F. Marsh
United States District Judge

cc: Counsel of Record
Probation Office

5 - FINDINGS OF FACT ORDER